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WHY DAN TARLOCK IS MY HERO

HOLLY DOREMUS*

Dan Tarlock has been my hero pretty much since I met him. I first confessed that publicly nearly twenty years ago, when I met a scientist who had worked with Dan through the National Research Council of the National Academy of Sciences. Learning that I was an environmental law professor, the scientist asked if I knew Dan. My response was the same then as it would be now: “Not only do I know Dan, I hope some day to grow up to be just like him.” I’ve accepted that I’ll never quite get there, but trying to emulate Dan is one of those aspirational endeavors that make you a better person even if you never reach your goal.

Let me try to explain some of what is so inspiring about Dan Tarlock. Academia is widely known as a place where fights are especially fierce because the stakes are especially low.¹ The primary reward of their work for most academics is ego gratification. Most of us are a walking bundle of insecurities, desperate for approval from our peers, students, deans, and whoever else might provide it. Not surprisingly, then, plenty of senior academics, especially those with substantial reputations, take advantage of their position relative to junior or less celebrated colleagues in an essentially feudal way, by (in a wonderful phrase suggested to me by a colleague) demanding fealty.

Dan Tarlock has far more justification for such behavior than most of those who insist on constant ring-kissing from their underlings. Although you would never know it from a conversation with him (or even from many conversations), Dan helped create the environmental law community, has spent decades building it, and remains a vital part of its warp and weft. If you pull on the threads of Dan’s career, you’ll find them attached to virtually every important aspect of the substantive tapestry of our field, as well as to the careers of almost all of those who have followed him into the

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1. Wikipedia (which, judging from my students, is the ultimate source for any research question these days) credits political scientist Wallace Sayre with the earliest articulation of what has become a truism: “Academic politics is the most vicious and bitter form of politics, because the stakes are so low.” *Sayre’s Law*, WIKIPEDIA, https://en.wikipedia.org/wiki/Sayre%27s_law [<https://perma.cc/Y9PR-CYYT>]. Countless others have repeated it in one form or another since then.

field. Nonetheless, it would never occur to him to demand fealty. Instead, he treats junior colleagues as peers, and generously offers them opportunities they otherwise would not have.

Dan was there at the very beginning, at the Airlie House conference that is often credited with inventing the term “environmental law” and giving shape to the field itself.² In characteristically humble fashion, he wrote recently about Joe Sax’s contributions to that conference,³ completely eliding his own. But there is no doubt that Dan’s combination of hard-headed lawyerly skepticism, openness to new ideas, encyclopedic knowledge, and creative synthesis has been vital to development of the field, both in the ivory tower and on the ground in practice.

As a scholar, Dan’s output has been astounding. It’s not just the quantity of scholarship he’s produced, although just a look at his CV is enough to make any ordinary human being tired. More important is the quality, influence, and range of his writing. He has been, of course, a central voice on everything water for many decades.⁴ But he’s also been at the forefront of a number of other subjects, from land use⁵ to biodiversity protection⁶ to ecological restoration⁷ to environmental justice (before it carried that name)⁸ to environmental federalism⁹ to climate change¹⁰ to the role of science in environmental policy.¹¹ He’s written for practicing lawyers¹² and scientists,¹³ as well as for academics.

2. RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 47 (2004).

3. A. Dan Tarlock, *Present and Active at the Creation*, *ECOLOGY L. CURRENTS* (Dec. 5, 2014), <http://elq.typepad.com/currents/2014/12/saxmemorial.html> [<https://perma.cc/58C4-LHLM>].

4. See, e.g., Sally K. Fairfax & A. Dan Tarlock, *No Water for the Woods: A Critical Analysis of United States v. New Mexico*, 15 *IDAHO L. REV.* 509 (1979); A. Dan Tarlock, *The Law of Equitable Apportionment Revisited, Updated, and Restated*, 56 *U. COLO. L. REV.* 381 (1985); A. Dan Tarlock, *The Creation of New Risk Sharing Water Entitlement Regimes: The Case of the Truckee-Carson Settlement*, 25 *ECOLOGY L.Q.* 674 (1999); A. Dan Tarlock, *Prior Appropriation: Rule, Principle, or Rhetoric?*, 76 *N.D. L. REV.* 881 (2000); A. Dan Tarlock, *The Legacy of Schodde v. Twin Falls Land and Water Company: The Evolving Reasonable Appropriation Principle*, 42 *ENVTL. L.* 37 (2012).

5. A. Dan Tarlock, *Siting New or Expanded Treatment, Storage, or Disposal Facilities: The Pigs in the Parlors of the 1980s*, 17 *NAT. RESOURCES LAW.* 429 (1984).

6. A. Dan Tarlock, *Local Government Biodiversity Protection: What Is Its Niche?*, 60 *U. CHI. L. REV.* 555 (1993).

7. A. Dan Tarlock, *Slouching Toward Eden: The Eco-Pragmatic Challenges of Ecosystem Revival*, 87 *MINN. L. REV.* 1173 (2003).

8. A. Dan Tarlock, *Environmental Protection: The Potential Misfit Between Equity and Efficiency*, 63 *U. COLO. L. REV.* 871 (1992).

9. A. Dan Tarlock, *Biodiversity Federalism*, 54 *MD. L. REV.* 1315 (1995).

10. A. Dan Tarlock, *Takings, Water Rights, and Climate Change*, 36 *VT. L. REV.* 731 (2012).

11. A. Dan Tarlock, *The Futile Search for Environmental Laws Based on “Good Science,”* 1 *INT’L J. BIOSCI. & L.* 9 (1996).

12. A. DAN TARLOCK, *LAW OF WATER RIGHTS AND RESOURCES* (2017 ed.).

13. Anthony Dan Tarlock, *Environmental Law: What It Is, What It Should Be*, 13 *ENVTL. SCI. & TECH.* 1344 (1979).

As a teacher, Dan co-authored his first water law casebook in 1971,¹⁴ and one of the first generation of environmental law casebooks in 1974.¹⁵ He has been a leading casebook author ever since.¹⁶ He has taught full-time at four law schools and visited or taught in the summer at more than a dozen more. Further leveraging his influence, he has shared his teaching notes and PowerPoints with anyone who asked.

Dan's scholarly work has informed his varied and influential consulting and advisory practice. He has consulted for law firms, states, and international organizations. To pick out just a few highlights, Dan was the primary author of *Water in the West: Challenge for the Next Century*,¹⁷ the 1998 report of the Western Water Policy Review Advisory Commission, which made a number of cogent recommendations for reforming water governance that, unfortunately, have gone largely unimplemented. He has consulted for the World Bank and the European Union. He has been a legal advisor to the NAFTA Commission on Environmental Cooperation. He has served on a large number of National Research Council committees to evaluate the scientific underpinning of policy choices; has been a member of the National Academies' Water Science and Technology Board; and has been named a lifetime National Associate of the Academies, an honor reserved for those who have made "extraordinary contributions" to the Academies and a very rare recognition for a lawyer.

All of which is a long-winded way of explaining that Dan is, and long has been, one of the most distinguished scholars in the world in the fields of environmental and natural resources law. Yet he remains remarkably humble and, far from demanding fealty, affirmatively seeks to help and mentor junior colleagues. I can speak with authority to Dan's role as a mentor, because I have directly benefited from it. I owe my academic career to Dan. Probably I should have been turning over ten percent of my salary to him for decades. (I hope he doesn't read this and seek retroactive payment, but I assume the statute of limitations has run.)

14. CHARLES J. MEYERS & A. DAN TARLOCK, *WATER RESOURCE MANAGEMENT: A COURSEBOOK IN LAW AND PUBLIC POLICY* (1971).

15. EVA H. HANKS, A. DAN TARLOCK & JOHN L. HANKS, *CASES AND MATERIALS ON ENVIRONMENTAL LAW AND POLICY* (1974).

16. Most recently, see A. DAN TARLOCK ET AL., *WATER RESOURCE MANAGEMENT: A CASEBOOK IN LAW AND PUBLIC POLICY* (7th ed. 2013).

17. A. DAN TARLOCK ET AL., *W. WATER POLICY REVIEW ADVISORY COMM'N, WATER IN THE WEST: CHALLENGE FOR THE NEXT CENTURY* (1998), https://www.unisdr.org/files/1785_VL102318.pdf [<https://perma.cc/6N98-CYEM>].

My first contact with Dan came when I was a judicial law clerk just out of law school. Back in those prehistoric days, we actually relied on physical mail rather than electronic communications. One day, out of the blue, I got a letter signed by Dan saying that a paper I had published as a law student was under consideration for recognition as one of the best papers of the year in environmental and land use law. I was floored. To be totally honest, I had at that point never heard of the *Land Use and Environment Law Review*, but it sure sounded distinguished and even though I wasn't yet an academic, I already showed the typical academic characteristic of being constantly in search of ego gratification.¹⁸ I quickly sent the requested reprints, thinking my piece probably wouldn't be selected but the positive feedback was welcome. Then I got another letter from Dan saying that in fact my paper would be reprinted in the next volume of the *Review*. At that point, while I did not yet think I wanted to be an academic, thanks to Dan, for the first time I thought maybe I *could* be if I ever decided to try that path.

The next time I remember encountering Dan,¹⁹ and the first time I recall meeting him in person, was several years later, when I was a newly minted academic. It was at a summer workshop for environmental law professors put on by the Foundation for Research on Economics and the Environment (FREE), a conservative group whose mission is to convert academics and judges to the tenets of free market environmentalism and law and economics.²⁰ It was a shared stress experience for many of the environmentalist law professors, which promoted bonding. I met a number of colleagues there who have become friends. But meeting Dan was special.

By then I knew a bit more about who, and how distinguished, he was. So I was a bit intimidated. Two things, however, quickly made me comfortable with Dan. First, he was thoughtful rather than tribal about his reaction to arguments. Although he wasn't about to give in to rank propaganda on the benefits of an economic approach, he also didn't reject markets out of hand. He was ready to consider them contextually, as

18. See *supra* note 1 and accompanying text.

19. Dan, whose memory is better than mine, remembers that we met earlier at a conference in Berkeley. Having been reminded, I do recall that meeting, but it doesn't have as important a story attached to it from my perspective as the one I recount in the text. So, since of course this piece is actually all about me, rather than about Dan, I'll stick with my choice.

20. FREE came under heavy criticism shortly thereafter for offering "junkets for judges," expenses-paid trips to attend seminars "oriented toward a particular perspective on legal questions that come regularly before the courts." Bruce A. Green, *May Judges Attend Privately Funded Educational Programs? Should Judicial Education Be Privatized?: Questions of Judicial Ethics and Policy*, 29 FORDHAM URB. L.J. 941, 944 (2002).

potentially useful in some contexts but potentially inappropriate or unlikely to work in others. Second, he was the very opposite of pompous, ready to go into town to visit a bookstore on a free afternoon and to take a callow new law professor along. He seemed to know just about everything about the history of the West, but was never condescending in sharing it. And he could talk baseball or wine as well as law or politics or literature. I came away from that meeting not converted to FREE's views, but definitely convinced that the environmental law community was worth being part of, largely because it included Dan.

There's one more interaction with Dan that I need to mention. In the summer of 2001, a drought combined with the need to protect multiple species of fish meant that the Bureau of Reclamation had no water to deliver to irrigators from the Klamath Project. For the first time in history, the Bureau closed the headgates of a reclamation project. As the fallout from that decision became clear in the fall, I got a call from Dan. He suggested that we might work together on a piece about the Klamath water crisis. Of course, I agreed immediately; not only was Dan an expert on the water law background to the crisis that I knew so little about, I knew he would more than pull his weight in any collaboration while giving me more than my share of credit. He turned out to be an even better co-author than I could imagine. That one article turned into two, then a book, then another unrelated project.

Dan's role as my mentor was complete: he had given me the confidence to get into academia, helped me grow into comfort in that role, and worked with me on projects I could not have tackled alone. Without Dan's interventions at those key moments, I would not be a law professor at all, would not have branched out into water law, and perhaps most importantly would not have gained Dan as a friend. Dan is smart, knowledgeable, thoughtful, conscientious, generous, and one of the kindest people I know. No wonder he is my hero. I look forward to many more years of reading his scholarship, taking his wine advice, hopefully collaborating with him (California's Bay-Delta water conflicts have not yet been adequately explained), and trying every day to be just a bit more like Dan Tarlock. I'll never live up to his standards, but the attempt will make me a much better person.